

**KASOWITZ BENSON TORRES LLP**

1633 BROADWAY  
NEW YORK, NEW YORK 10019  
(212) 506-1700  
FAX: (212) 506-1800

ASPEN  
ATLANTA  
HOUSTON  
LOS ANGELES  
MIAMI  
NEWARK  
SAN FRANCISCO  
SILICON VALLEY  
WASHINGTON DC

MATTHEW B. STEIN  
DIRECT DIAL: (212) 506-1717  
DIRECT FAX: (212) 835-5017  
MSTEIN@KASOWITZ.COM

February 20, 2019

**Via Electronic Mail and Federal Express**

Ray C. Schrock, Esq.  
Jacqueline Marcus, Esq.  
Garrett A. Fail, Esq.  
Sunny Singh, Esq.  
Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153

Re: *In re Sears Holding Corporation, et al.*, Case No. 18-23538 (Bankr. S.D.N.Y.)

Dear Counsel:

We represent Steel 1111, LLC (“Steel”) in connection with that certain real property lease (the “Lease”) between Steel, as lessor, and Sears, Roebuck & Co. (“Sears”), as lessee, with respect to 1111 Franklin Avenue, Garden City, New York 11530 (the “Leased Premises”).

By its own admission, Sears remains in possession of the Leased Premises. However, Sears has failed to comply with critical provisions of the Lease with respect to its ongoing duty to make ordinary repairs to the Leased Premises. Section 8(c) of the Lease provides, in pertinent part, that “Sears and not Landlord shall be responsible for the ordinary repair and maintenance of the [Leased] Premises; provided that, subject to the provisions hereinafter set forth, (i) Sears shall not be responsible for funding any Major Repair/Capital Improvement, and (ii) Sears shall be responsible for funding any repair which is not a Major Repair/Capital Improvement and which is not covered by net proceeds received by Sears with respect to applicable insurance, if any (“Ordinary Repairs”), subject to an aggregate cap of \$125,000 for such Ordinary Repairs in any consecutive twelve (12) month period . . . .”

Sears’ inadequate attention to the required maintenance of the Leased Premises has only worsened since it vacated the Leased Premises following a going out of business sale. Specifically, it has come to Steel’s attention that Sears remains responsible for the following repairs:

## **KASOWITZ BENSON TORRES LLP**

Ray C. Schrock, Esq., *et al.*  
Weil, Gotshal & Manges LLP  
February 20, 2019  
Page 2

### Main Building

- The heating, ventilating and mechanical systems appear to be not functioning or controlled properly as there are significant temperature swings on the interior of the floors.
- The two chillers in the mechanical mezzanine seem to have leaks as evidenced by the spillage on the floor and excessive drums of additional fluids/ freon.
- One passenger elevator is shut down completely. The second elevator is shuttering and the door safety edges are not functioning causing an unsafe and hazardous condition.
- All egress stairwells door hardware needs to be checked for proper operation and lighting. All debris must be removed from the stairwells and landings.
- Emergency and exit lighting on the upper floor of the building needs to be checked to confirm that an adequate number and location of lights and signs are in place to safely navigate a way out in an emergency. Same for the balance of the Leased Premises including the parking structure.

### Parking Structure/Connecting Plaza and Exterior

- Lighting at the plaza on both the east and the west entrances is out completely and the hi-hat lighting between the entrances has fixtures operating sporadically.
- Lighting on all parking levels has fixtures operating sporadically.
- Expansion joint between the parking structure and the connecting plaza is completely deteriorated causing water damage to the lower plaza ceiling at the ground floor and the lower level. This has been causing debris to fall.
- Concrete deck spalling and cracking throughout the upper parking deck and ramps.
- Various concrete curbs and sidewalks throughout the property are cracked and/or lifted creating potential hazard.
- Waterproofing membrane beneath the concrete sidewalk on the west side of the property above the loading ramp/dock has been breached allowing water to enter the loading dock area and causing steel to spall and fireproofing to delaminate; all concrete caulk joints need to be replaced in this area and trench drains repaired.
- Precast panels on the main building and the parking structure parapet need the caulk joints to be repaired/replaced.
- Roof around the outside perimeter walking deck needs replacement and has allowed water to infiltrate the plaster ceiling over the main entrance on Franklin Avenue, causing it to collapse. Currently there is a tarp above the main entrance.
- The mechanical penthouse concrete blocks and stucco is exhibiting cracking and there is evidence of water intrusion and staining.
- The dry sprinkler system servicing the lower level of the parking structure needs to have the dry valves replaced and overall system integrity checked if these valves have

**KASOWITZ BENSON TORRES LLP**

Ray C. Schrock, Esq., *et al.*  
Weil, Gotshal & Manges LLP  
February 20, 2019  
Page 3

- been malfunctioning allowing water to sit in the piping which would be subject to freezing and breaking.
- It appears that the roof is being salted causing issues with respect thereto.

Given Sears' continued possession of the Leased Premises, it remains obligated to comply with all provisions of the Lease, including, without limitation, its duty to execute the aforementioned list of ordinary repairs, which list is not intended to be exhaustive and Landlord hereby reserves all rights it may have under the Lease. Please confirm that Sears will comply with this obligation within five business days.

Very truly yours,

/s/ Matthew B. Stein

Matthew B. Stein

cc: Joseph Lostritto (via email)  
Ashley Lostritto (via email)  
Julia E. Sanabria (via email)  
W. Michael Bond (via Federal Express and email)  
Sears Holding Corporation, President – Real Estate (via Federal Express)  
Sears Holding Corporation, Associate General Counsel – Real Estate (via Federal Express)